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BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Implement the Commission's Procurement Incentive Framework and to Examine the Integration of Greenhouse Gas Emissions Standards into Procurement Policies.	)	Rulemaking 06-04-009 (Filed April 13, 2006)

SACRAMENTO MUNICIPAL UTILITY DISTRICT'S COMMENTS ON THE PROPOSED DECISION OF COMMISSIONER PEEVEY

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Pursuant to California Public Utilities Commission (CPUC) Rule of Practice and Procedure 14.3 the Sacramento Municipal Utility District (SMUD) hereby files its comments on the Proposed Decision of President Peevey providing an Interim Opinion of Greenhouse Gas Regulatory Strategies (PD). SMUD has supported Assembly Bill (AB) 32 from a very early stage in its legislative process, and is committed to reducing the carbon emissions associated with the energy SMUD provides to serve its customers. SMUD is disappointed in the selection of the point of regulation to be the "deliverer." SMUD understands the CPUC and the California Energy Commission (CEC) have selected the deliverer point of regulation as the recommended approach, and our comments on the PD below focus on providing constructive improvements to the selected point of regulation. However, both Los Angeles Department of Water and Power and Southern California Public Power Authority present strong arguments for the Retail Service Providers (RSP) as the point of regulation. SMUD too continues its belief that an RSP point of regulation is superior:

- for its potential effectiveness in reducing greenhouse gas (GhG),
- for its efficiency in evolving the whole electricity infrastructure towards the long term GhG goals, and
- for its least impact to electricity bills while still imposing real economic burden proportional to carbon content in the cost of electricity.

SMUD is deeply troubled by the clear inferences that SMUD as a publicly owned utility (POU) may not be as active in the energy efficiency and renewable energy areas as investor owned utilities (IOU). These characterizations are consistently inaccurate and

no basis upon which to alter the regulatory pathways for effecting California energy policy. As the Commissions well know, imposing requirements that alter the resources generating electricity and judging the cost and effectiveness of consumer energy reduction programs is a far more difficult task than projecting GhG reductions. Setting or monitoring renewable portfolio standard (RPS) and energy efficiency (EE) goals for utilities is not the right job for the California Air Resources Board (CARB), whose focused concern is, and must remain, air quality and its impacts on society; AB 32 is clearly within that domain. However important the air quality effects of RPS and EE are to AB 32, those programs were set in place by the present governance structure. That present governance structure can be relied upon for effecting broader energy policy in California; it need not, and should not, be altered by placing the responsibility for setting or monitoring RPS and EE programs at CARB

SMUD is also concerned about the lack of discussion of cost minimization and reliability in the PD. In selecting the point of regulation neither cost nor reliability is mentioned. (PD, pp. 53-65.) Furthermore, SMUD reiterates its concerns about adding the costs of an auction to the costs of building renewable resources and reducing consumer demand for electricity. Cost and budgeting complications due to allowance auction price volatility may well have a paralyzing and cost-increasing effect on programs intended to benefit from the allowance auction revenue. SMUD recommends that administrative allocation of allowances to the RSP would be the least-cost most effective way to achieve emissions reductions, and that any use of an auction should be limited to avoid spikes in electricity costs to California's electricity customers.

Consistent with the short summary above, SMUD's comments focus on key points

and errors in fact and law that lead to incorrect recommendations to CARB. These key points and errors in fact are summarized below:

1. **Ratepayer funds should be used for investments in direct emission reductions to minimize costs and maximum benefits consistent with AB 32.**

2. **Existing programs such as the RPS and EE that also reduce GhG will account for the great majority of the emissions reductions in the electricity sector.**

3. **Allowances should be administratively allocated to RSPs in the electric sector, as a means to maximize emissions reductions.**

4. **Emissions allocations and/or auction revenue distribution should not force significant cost shifts between RSPs.**

5. **Any auction should start with a very small portion of the total allowances, and should increase slowly to adequately build stability, confidence, and effective administration while minimizing price shocks to California's economy.**

6. **California should move forward to create a regional or national market with common rules that minimizes the incentives for leakage for any of the sectors in our economy.**

7. **A one size fits all, double regulated energy efficiency and renewable energy program will inhibit its success.**

8. **Governing boards should determine the best amount and use of energy efficiency funds compatible with State law and policy in a parallel manner to that of the CPUC and IOUs.**

I. RATEPAYER FUNDS SHOULD BE USED FOR INVESTMENTS IN DIRECT EMISSION REDUCTIONS TO MINIMIZE COSTS AND MAXIMIZE BENEFITS CONSISTENT WITH AB 32.

SMUD is very concerned that this PD fails to include the principle of least-cost solution in its criteria for selecting and implementing the point of regulation. (PD, pp. 53-80.) In the discussion of the difference between an auction and free distribution of allowances, the PD presumes that an auction could benefit consumers more than free

distribution of allowances. (PD, p. 84.) SMUD strongly disagrees with this statement as it would apply to SMUD. Rather than using its customer/owner funds to make direct reductions in GhG emissions, SMUD would be required to increase electricity rates to fund State administration of an auction, as well as new State programs that would result from the multi-billion dollar auction revenue stream. In the best case scenario, some portion of these customer/owner funds would flow back to make emissions reductions in the electricity sector. However, the reductions gained as a result of these expenditures would most certainly be less than applying the funds towards direct emissions reductions in the first place. Since there are no profits or profit motive for SMUD, this interchange would be a money-losing proposition for SMUD and an additional cost to its ratepayers. AB 32 specifically states the intent of the Legislature that CARB design emissions reduction measures "in a manner that minimizes costs and maximizes benefits for California's economy." (Cal. Health and Safety Code §38501[h].) As such, the implementation of the deliverer system needs to minimize costs and maximize benefits.

SMUD is concerned about ratepayer funds going to purposes other than investments in direct emission reductions or relief for low income ratepayers. SMUD believes ratepayer funds should be used in ways that directly reduce emissions such as building or contracting for additional renewable generation, capital funding for new transmission to reach renewable generation, or investing in additional energy efficiency programs for its ratepayers. In addition and consistent with SMUD's existing programs, SMUD would intend to use ratepayer funding (whether from direct or allocated auction revenue) to decrease the regressive rate impacts of this program on those ratepayers that will have the most difficulty paying the higher costs of GhG compliant generation.

A. SMUD Supports Administrative Allocation of Allowances to Retail Service Providers.

SMUD recognizes the PD's recommendations to regulate emissions at the deliverer. SMUD also feels quite strongly that in order to minimize costs to the electricity customers of the state, any administratively assigned allowances should accrue to the regulated RSP. The RSP is the entity in the electricity delivery chain with the greatest business decision opportunities to keep consumer electricity costs low and in maintaining reliability. In addition, the RSP, unlike the deliverer, is a semi-permanent fixture in California's electricity market. The RSP will not significantly increase or decrease its participation in the California market as a result of market conditions. The RSP is the entity best positioned and most able to deliver clean solutions to meet its customer needs, whether they be increased renewable energy or EE programs. Finally, the RSP is a regulated entity, whether it be through the CPUC in the case of the IOUs or the individual governing boards in the case of the POUs, which means that the RSP cannot increase its rates to pass on the opportunity costs of not selling its allowances, a concern in unregulated markets with free allowance allocation.

Administrative allowance allocations accruing to the RSPs would allow RSPs to dedicate more resources to direct emissions reductions than an auction system. RSPs should be able to use banking or trading to smooth out any compliance year levels above or below the targets. Under this program the reduction in emissions that are the goal of AB 32 would be obtained in a stable efficient way. This direct allocation would avoid expenditures by RSPs on auction administration, the need to raise new funds for allowances or to hedge their exposure. All funds would be spent on direct reductions to meet the goals of AB 32.

Administrative allowance allocations should be done in a way that minimizes cost shifting between RSPs. Allocations that are distributed in such a way that they most closely match individual RSP needs will minimize redirection of ratepayer funds of certain California electricity customers for the benefit of others. Each individual RSP has its own burden for emissions reduction, and each should be treated individually, recognizing that those with higher emissions will need to reduce at a faster rate than those with lower emissions.

Liquidity in the market would be best achieved through bilateral contracts and the development of a secondary market for allowances, as has been longstanding practice in the electricity market.

B. Any Auction Should be a Very Small Portion of the Total Reductions.

SMUD agrees the majority of the emissions reductions will come from increased renewable generation and increased penetration of energy efficiency while reducing the amount of generation from high carbon resources. SMUD is concerned about the potential costs and volatility of an auction from both a ratepayer cost standpoint and as a direct reduction funding mechanism. SMUD estimates its potential allowance liability to be between $20,000,000 and $200,000,000 per year if all allowances were subject to auction. These estimates assume an allowance cost of between 5 and 50 dollars per ton, which is consistent with but not as broad as the full range of potential allowance values found in recent industry references. These costs are significant and show the great variability between the potential auction prices. To ask RSPs and their ratepayers to be subject to potentially large swings in auctioned allowance prices at the level of hundreds of millions of dollars per year is untenable. Businesses and residents budget for their

expected utility costs with some reasonable expectation they will not change to a great degree. Similarly, utilities must plan for their energy costs with some degree of certainty. Adding such a significant uncertainty on top of existing gas price uncertainty and hydro variability compounds the problems utilities face in maintaining low cost, reliable and clean electricity.

Furthermore, funding capital intensive renewable development, transmission development or even stable energy efficiency programs requires stable funding. One simply has to look at the boom-bust cycle for financing wind projects that are dependent upon renewal of the production tax credit to see the impact of funding changes. In order to finance the capital intensive projects necessary to reduce carbon emissions from electricity serving California load, we will need a stable funding mechanism regardless of whether the funding is coming from the RSPs or some auction revenue fund. A volatile funding source like an auction in its infancy is not the solution.

Just as the European Union Trading System experienced great swings in allowance prices, this new experiment with a California only auction will experience its share of volatility. The impact to RSP budgets and ratepayer finances cannot be ignored.

SMUD further recommends the auction participants be limited to only those who need allowances. This will help to minimize speculators. This restriction would be especially important for smaller participants with limited capital so they do not get priced out of the market. Recognizing that some banking or borrowing of allowances will be necessary to hedge risks, SMUD recommends that entities be limited in the quantities of allowances they can purchase in a way that is consistent with their needs.

C. California Should Advocate for a Coordinated Regional and National Approach.

California is not alone in its pursuit of an auction structure for GhG reductions. Both the national proposals and the discussions within the Western Climate Initiative contemplate an auction structure for some portion of the allowances. A multi-state or national program will go a long way toward alleviating the difficulties of addressing leakage and power generated out of state. Setting up an auction is going to involve a significant cost in development and startup costs not to mention administration. California should delay the initiation of the auction as a one state solution and instead hold off on the auction for a regional or national system.

II. A ONE-SIZE-FITS-ALL, DOUBLE-REGULATED ENERGY EFFICIENCY AND RENEWABLE ENERGY PROGRAM WILL INHIBIT ITS SUCCESS.

The PD recommends that CARB require all POUs to provide and deliver the same level of EE programs and renewable energy as the CPUC sets for the IOUs. CARB is to set this uniform requirement regardless of where that RSP is located in the state or what programs or policies it may have initiated and captured previously. (PD, p. 118.) One of the hallmarks of AB 32 is to encourage California to be a leader in innovation and pioneering technologies.

> By exercising a global leadership role, California will also position its economy, technology centers, financial institutions, and businesses to benefit from national and international efforts to reduce emissions of greenhouse gases. More importantly, investing in the **development of innovative and pioneering technologies** will assist California in achieving the 2020 statewide limit on emissions of greenhouse gases established by this division and **will provide an opportunity for the state to take a global economic and technological leadership role in reducing emission of greenhouse gases**.

(Cal. Health & Safety Code § 38501[e] [emphasis added].) Recommending that CARB adopt regulations for the POUs that match those regulations adopted by the CPUC for IOUs stifles opportunities for innovation and pioneering technology and is in direct conflict with AB 32. It is through the diversity of approaches taken by the CPUC, the IOUs and the individual POUs that the best solutions will appear. A single solution will crowd out new and different ideas that are the hallmark of Americans and especially Californians.

> **Error in Fact:** It is reasonable to require the Public Utilities Commission and Publicly Owned Utilities to set ~~for the State of California to apply the same~~ minimum requirements in the areas of energy efficiency and renewables ~~to all retail providers of electricity~~. (PD, p.109.)

It is amazing how quickly the CPUC and CEC forget the important role played by the POUs during the energy crisis and the unenviable situation faced by the IOUs. Instead of embracing the diversity and benefits gained by California through different governance structures, the PD instead attempts to make all entities subject to the requirements set by the CPUC that are to be simply rubber stamped by CARB.

To be clear, SMUD embraces and supports the CEC's efforts to strengthen building and appliance efficiency standards and supports the continued efforts by the CEC to expand those standards into the areas of televisions, computers and phones. SMUD has spent considerable funds developing and advocating for energy efficient homes for the past 25 years. Furthermore, SMUD has been a pioneer in the development and installation of utility scale and distributed solar as well as development and installation of wind resources for the past 15 years. SMUD's concerns relate to the implication that its governing board has somehow been reticent or behind in the

development of these resources and therefore, needs CARB oversight to initiate and follow through on these programs. Nothing could be further from the truth.

A. Governing Boards Should Determine the Best Amount and Use of Energy Efficiency Funds Just Like the CPUC Does for IOUs.

SMUD supports the finding of fact establishing that it is reasonable that existing California policies regarding energy efficiency building codes and appliance efficiency standards be maintained and strengthened. This area of appliance efficiency and building standards cannot be set by individual RSPs. Instead, these must be set at the state level. It is in this area where state involvement is crucial. As we move forward and attempt to obtain greater and greater levels of EE in California, there will be plenty of areas where the state should focus its resources. These could include areas like a building retrofit standard for commercial buildings. The individual RSPs can provide incentives, but only the State can enact requirements.

In the area of RSP EE programs, each governing board (CPUC or POU) should determine the best mix of EE measures, tailored to the specific situation faced by that RSP. In so doing, the state as a whole will be better served. SMUD, by serving a smaller geographic area all located in the Sacramento area, can tailor its energy efficiency programs to the specific weather patterns and electricity usage of its customers. The system peaks occur in the summer when delta breezes do not blow and cool the inland valley. Thus, SMUD's energy efficiency programs focus on cooling load. Although reducing energy use in the winter is a benefit, reducing the summer peak provides the most benefit in carbon reductions. An RSP like Alameda faces a different situation. Alameda does not have the same summer heat impacts as Sacramento. Therefore, while

Sacramento may need to focus on air conditioning, Alameda's funds may well be better spent on other programs.

B. CARB Enforced Renewable Energy Target for POUs are Unnecessary for Compliance with AB 32.

CARB targets for RPS would be a negative departure from established California policy development fundamentally affecting multiple service sectors in our economy. The PD recommends that CARB set the same minimum requirements for renewable generation for the POUs as the levels set by the CPUC for the IOUs. (PD, p. 109 & 118.) Since no changes are required of the IOUs but only of the POUs, the clear implication is that the POUs have failed to meet the standards set by the CPUC for the IOUs. This conclusion could not be further from the truth. The majority of the IOU progress towards meeting their RPS targets has been on paper through signed contracts for generation that has yet to be constructed. The POUs have not only signed contracts but also have installed or caused to be installed a higher level of new renewable generation than the IOUs since 2003. In addition, over the past 4 years, IOU growth in California RPS eligible renewables has actually been negative 0.1% per year, while POU RPS eligible renewable growth has been approximately 3% per year. (2007 Integrated Energy Policy Report [IEPR], p. 134.) Considering this progress, it cannot be said that the POUs are lagging behind the IOUs in their efforts to meet the State's RPS goals. Further, several POUs have set goals for RPS that exceed those of the state; however, they have not advocated for CARB to assert its influence over the CPUC to make sure that the IOUs meet the same RPS targets. (2007 IEPR, p. 132.) Therefore, the one-sided requirement in the Interim Order that CARB "require POUs to **deliver** at least 20 percent renewable electricity" is inappropriate when the IOUs may be relying upon contracted - for

generation that may never appear or be significantly delayed to meet their renewable portfolio standard requirements. (PD, p. 118, [emphasis added].)

Furthermore, SMUD began developing utility scale and distributed solar, geothermal, biomass and wind technologies prior to the initiation of a State-mandated renewable portfolio standard. SMUD installed its first 1 MW solar system at Rancho Seco in 1984. Since then, SMUD led the nation in developing a distributed solar rooftop program, again at the direction of its local governing board without a mandate from legislation or a state agency.

In the area of transmission, the IOUs have had significant difficulty in constructing new transmission regardless of whether that transmission is to relieve congestion or to reach renewable generation. Path 15 is an example of a situation where PG&E was unable to get approval to construct the needed improvements and instead a consortium of others had to permit and construct the addition to Path 15. San Diego Gas and Electric is attempting to obtain approval for the Sunrise Powerlink to reach renewable generation. That project has been significantly delayed and may or may not be approved. POUs have constructed and will continue to construct transmission such as the Transmission Agency of Northern California's California Oregon Transmission Project transmission line. The POUs work together to share the cost, obtain the permits and construct these facilities. Thus, the CPUC and CEC should be embracing the diversity of the IOUs and POUs instead of attempting to create a one-size-fits-all solution.

The PD's Conclusions of Law 1 and 3 conveniently fail to mention the very important role taken by the POU governing boards that is equivalent to the role played by

the CPUC for the IOUs. (PD p. 115.) Just like the CPUC, the POU boards set energy efficiency goals for their utilities as well as set renewable portfolio standard targets. The phrasing of Conclusions of Law 1 and 3 imply that no standards are set by governing boards or that those standards are insufficient. Therefore, the PD implies CARB oversight is necessary. These Conclusions of Law could not be more misleading. In fact, the SMUD Board has set goals that are more aggressive than those required by the CPUC of the IOUs, requiring a 1.5% reduction in projected electricity sales per year, and a 20% renewable supply goal plus an additional 3% from Greenergy for 2011. SMUD recognizes that the 15% boost to its RPS goal from Greenergy is not a requirement imposed by law, and not one the PUC has imposed upon IOUs. What these conclusions of law imply are another layer of regulation on top of the POU governing boards. What is even more disconcerting is the implication that CARB should simply accept and adopt those standards set by the CPUC for the IOUs. Setting a common standard for three IOUs is one thing, setting common standards for 47 POUs is something else entirely.

> **Error in Law: 1.** AB 2021 requires the Energy Commission, in consultation with POUs and the Public Utilities Commission, to set statewide energy efficiency goals. AB 2021 requires each publicly owned electric utility to adopt energy efficiency and demand response goals. ~~However, the statute does not require that POUs comply with the energy efficiency goals set by the Energy Commission~~.
>
> **3.** ~~SB 107 requires POUs to set RPS targets, but does not specify minimum delivery requirements or the types of renewables that should qualify.~~

Given the POUs added more installed renewable generation than the IOUs since the State RPS law has been in place, given also the POUs have vastly different load profiles, opportunities for renewable investment, and different abilities to fund transmission, the State of California would be worse off, not better, if the POUs were put

in the same regulatory program as the IOUs. (This PD clearly asks CARB to simply take the determinations made for the IOUs by the CPUC and adopt that standard for the POUs. [PD, p. 118.])

C. There is Insufficient Information to Address the Legal Authority of CARB to Regulate Energy Efficiency and Renewable Energy.

SMUD finds it no surprise that what the PD attempts to accomplish is direct regulation of the POUs by the CPUC through CARB. SMUD further finds it disheartening the PD's recommendation to CARB is to only apply to the POUs but not to the IOUs. The CPUC is very willing to recommend that another governing board, those of the POUs, hand their authority to CARB but is not recommending to abdicate its own authority to CARB. The question regarding the authority of CARB to issue EE and RPS regulations and standards has not been fully explored in this proceeding and is not ripe for determination. (PD, p. 118.) Furthermore, SMUD believes this determination should be made by CARB after input from those CARB would attempt to regulate.

III. THE DEFINITION OF "DELIVER" SHOULD BE CLARIFIED AND EXPANDED TO INCLUDE FACILITIES OWNED BY SUBSIDIARIES AT A RSP'S ELECTION.

The definition of "Deliverer" is not clear. (PD, p. 65-66.) SMUD assumes the intent is to have the deliverer be the generator when the generator is located within California. Much of SMUD's in-state generation, such as the Cosumnes Power Plant, is held by Joint Powers Authorities (JPAs). SMUD's plants that are held through JPAs are dispatched by SMUD, and all the energy delivered to the bus bar is owned by SMUD. The plants purchase their natural gas from SMUD, and the plants are under contract to provide all the power over the plant life to SMUD. Nonetheless, in reading the PD, it is not clear whether SMUD or the JPA, or the contractor operating the plant would be considered the deliverer. SMUD recognizes that POUs will have different financing and

ownership arrangements than Independent Power Producers or Investor Owned Utilities, and recommends that the definition of deliverer be delved into in much more detail in light of the wide spectrum of ownership arrangements that exist for plants in the state.

Finally, SMUD strongly supports the comments of the Los Angeles Department of Water and Power regarding the treatment of the natural gas industry. Effectively giving a pass to the natural gas industry simply shifts their burden to the rest of the California economy.

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Respectfully submitted,

/s/

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CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the attached:

SACRAMENTO MUNICIPAL UTILITY DISTRICT'S COMMENTS ON PROPOSED DECISION OF COMMISSIONER PEEVEY

on all known parties to R. 06-04-009 and CEC Docket No. 07-OIIP-01 by transmitting an e-mail message with the document attached to each party named in the official service list. I served a copy of the document on those without e-mail addresses by mailing the document by first-class mail addressed as follows:

See attached service list

Executed this 28th day of February, 2008, at Sacramento, California.

/s/
Lois Navarrot

Service List R. 06-04-009, as of February 28, 2008

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Findings of Fact

1. The state Energy Action Plan lays out a "loading order" for investment in electricity resources in California that puts energy efficiency as the top priority, with renewable resources second, and clean fossil-fired generation to the extent other options are not available.

2. Energy efficiency building codes and appliance efficiency standards promulgated by the Energy Commission provide a base for energy and GHG emissions reductions.

3. Consistent with AB 2021, the Energy Commission has set statewide energy efficiency goals at the level of cost-effective investment in energy efficiency.

4. The Public Utilities Commission sets requirements and energy savings goals for energy efficiency programs for the IOUs, and has set up a risk/reward mechanism for the IOUs that allows them to earn financial incentives if they exceed the adopted energy savings goals and assesses penalties if they fail to meet the goals.

5. It is reasonable to require the Public Utilities Commission and Publicly Owned Utilities to set ~~for the State of California to apply the same~~ minimum requirements in the areas of energy efficiency and renewables ~~to all retail providers of electricity~~.

6. It is reasonable that existing California policies regarding energy efficiency building codes and appliance efficiency standards, retail provider energy efficiency programs, and the emissions performance standard be maintained and strengthened as recommended in this decision.

7. For the electricity sector, a cap-and-trade system, in conjunction with the continuation and strengthening of existing policies regarding energy efficiency building codes and appliance efficiency standards, retail provider energy efficiency programs, the renewables portfolio standard program, and the emissions performance standard as recommended in this decision, is likely to be a less expensive means of complying with

AB 32 GHG emission reduction requirements than sole reliance on existing and increased mandatory programmatic requirements.

8. For the electricity sector, GHG emissions trading would ~~maximize~~allow flexibility in achieving emissions targets by allowing obligated entities to ~~rely~~pursue ~~on least-cost~~ options across the entire capped economic sector~~economy~~.

~~9. For the electricity sector, a GHG emissions cap-and-trade program would encourage investment in research and innovation in technologies that lower GHG emissions.~~

10. For the electricity sector, a GHG emissions cap-and-trade program would ~~allow~~give market participants ~~to manage~~ a risk management tool associated with compliance obligations.

11. For the electricity sector, a GHG emissions cap-and-trade program would allow redistribution of ~~distribute~~ the cost of GHG reductions ~~most efficiently across~~among all capped entities.

12. Implementing a GHG emissions cap-and-trade system in 2012 for the electricity sector would allow entities to gain experience with finding real ~~least-cost~~ emission reduction opportunities outside their purview.

13. It is reasonable for ARB to proceed to design a multi-sector GHG emissions cap-and-trade system for California that includes the electricity sector, for implementation in 2012, as described in this decision.

14. For the electricity sector, placing the compliance obligation in a GHG emissions cap-and-trade system on the entities that deliver power to the electricity grid in California, which we call "deliverers," is reasonable because this point of regulation best meets, on balance, the ~~most important~~ criteria~~, as~~ described in this decision.

15. By choosing a deliverer *point of regulation* we are simply choosing a trigger that determines which entities have to comply, but what is being regulated is the amount of GHGs being produced in California or to supply electricity to customers

located in California.

16. The deliverer point of regulations does not single out wholesale sales of electricity, but rather applies uniformly to electricity consumed in California and electricity generated in California.

17. An entity with compliance obligations under a deliverer form of regulation, if it does not already possess enough allowances, would have an opportunity after delivery of the energy to acquire allowances on the market or to show compliance using offsets or other flexible compliance mechanisms.

18. The GHG regulatory program we are proposing would not prevent even high GHG sources from providing reliability services when needed.

19. A deliverer point of regulation would treat all electricity delivered to the California grid the same, whether that electricity is generated in California or elsewhere. In either case, the deliverer would later have to surrender GHG allowances (or secure adequate offsets) based on the amount of GHG emissions associated with that electricity.

20. "Global warming poses a serious threat to the economic well-being, public health, natural resources, and the environment of California. The potential adverse impacts of global warming include the exacerbation of air quality problems, a reduction in the quality and supply of water to the state from the Sierra snowpack, a rise in sea levels resulting in the displacement of thousands of coastal businesses and residences, damage to marine ecosystems and the natural environment, and an increase in the incidences of infectious diseases, asthma, and other human health-related problems." (Health & Safety Code § 38501(a).)

21. "Global warming will have detrimental effects on some of California's largest industries, including agriculture, wine, tourism, skiing, recreational and commercial fishing, and forestry. It will also increase the strain on electricity supplies necessary to meet the demand for summer air-conditioning in the hottest parts of the state." (Health & Safety Code § 38501(b).)

22. The local benefits to California of reducing GHG emissions are further elaborated in the Final Climate Action Teach Report to the Governor and the Legislature (presented to the Legislature in March 2006) and other sources.

23. Any burdens on interstate commerce that may result from the implementation of AB 32 under the regulations that we recommend to ARB (including a deliverer point of regulation) would be purely incidental, while the local benefits to California of reducing GHG emissions, and therefore the impact of global warming, would be most significant.

24. The proposed GHG regulations are intended to change the way that electricity is generated and consumed and are expected to increase the use of (i) renewable resources to generate electricity, (ii) low-emitting sources of generation, and (iii) more efficient methods of using electricity. To the extent such actions are unable to sufficiently reduce GHG emissions associated with the use of electricity, these regulations are expected to result in investment outside of the electricity sector that will cost-effectively reduce GHG emissions from other activities.

25. It is reasonable to regulate the GHG emissions associated with the multi-jurisdictional utilities' deliveries of electricity to the California grid on a retail provider basis, with GHG emissions attributed based on a proportional share of their electricity sales in California.

26. The auctioning of at least some portion of the emission allowances available to the electricity sector would promote liquidity in the emission allowance market, improve the accuracy of emission allowance prices as a reflection of marginal emission reduction costs, and allow new market entrants access to allowances on an equal basis with other parties.

27. It is reasonable to require that at least some portion of the GHG emissions allowances for the electricity sector be auctioned in a GHG emissions cap-and-trade system in which deliverers are the point of regulation for the electricity sector. As part of this approach, all proceeds from the auctioning of allowances for the electricity sector

would be used in ways that directly benefit electricity consumers in California through development of low carbon renewable resources, transmission to reach renewable generation, consumer energy efficiency programs, low income rate assistance or related programs.

28. The record in R. 06-04-009 is not sufficient, at this time, to determine a reasonable mixture of auctioning and the administrative allocation of GHG emissions allowances for the electricity sector.

29. The record in R. 06-04-009 is not sufficient, at this time, to determine a reasonable approach for the administrative allocations of GHG emissions allowances, if such free distributions are undertaken.

30. It is reasonable for the State of California to apply the same minimum requirements in the areas of energy efficiency and energy conservation to all entities that provide retail sales, transportation, and/or distribution of natural gas to end-users in California.

31. Key differences between the electricity and natural gas sectors make it reasonable to recommend that ARB to proceed to design a multi-sector GHG emissions cap-and-trade system for California but to not include the natural gas sector at this time.

32. Entities in the natural gas sector have fewer options to reduce GHG emissions than entities in the electricity sector.

33. There are limited commercially available lower carbon alternative sources of natural gas.

34. The only reliable near-term options for reducing GHG emissions in the natural gas sector are energy efficiency programs.

35. The incremental benefits from including the natural gas sector in a multi-sector GHG emissions cap-and-trade system are likely to be less than those from including the electricity sector.

36. Reporting protocols for GHG emission arising from the storage, transportation and distribution of natural gas to end-users are under development and do not yet include provisions for reporting end-user combustion related GHG emissions.

37. Implementing a multi-sector GHG emissions cap-and-trade system that includes small end-users of natural gas now may expose those customers to greater price risk than small end-users in the electricity sector.

38. Including all fuels in a multi-sector cap-and-trade system could maximize the benefits of a market-based system.

39. Taking a programmatic approach to the natural gas sector now does not preclude future inclusion in a multi-sector GHG emissions cap-and-trade system.

40. It is reasonable for ARB to not include the natural gas sector when designing a multi-sector GHG emissions cap-and-trade system for California, for implementation in 2012, as described in this decision.

Conclusions of Law

1. AB 2021 requires the Energy Commission, in consultation with POUs and the Public Utilities Commission, to set statewide energy efficiency goals. AB 2021 requires each publicly owned electric utility to adopt energy efficiency and demand response goals. ~~However, the statute does not require that POUs comply with the energy efficiency goals set by the Energy Commission~~.

2. SB 1068 as amended by SB 107 requires that IOUs, CCAs, ESPs, and POUs recognize the intent of the Legislature to obtain at least 20% of delivered electricity from renewable resources by 2010 while taking into consideration the effect of the standard on rates, reliability, and financial resources and the goal of environmental improvement.

3. ~~SB 107 requires POUs to set RPS targets, but does not specify minimum delivery requirements or the types of renewables that should qualify.~~

4. The FPA does not address GHG emissions, nor is there any suggestion in the FPA or in its administration that Congress intended to forbid states from enacting GHG regulations on their own.

5. 15 U.S.C. § 824(a) states: "Federal regulation … [under the FPA extends] only to those matters which are not subject to regulation by the States." This broad savings clause supports the conclusion that because air pollution is subject to regulation by the State, and not by the FPA or the FERC, state regulation of GHG emissions caused by the generation and consumption of electricity is not preempted by the FPA, but may be regulated by the States.

6. Because the FPA expressly leaves room for state regulations dealing with electricity and because there is nothing in the FPA that deals with the regulation of emissions (either generally, or GHG emissions specifically) the deliverer approach is not preempted by the FPA.

7. A GHG regulation that incorporates a deliverer point of regulation is an environmental regulation whose purpose is to decrease the impact of global warming on California insofar as that impact is caused by electricity used or generated in California. Such a GHG regulation is not a regulation or wholesale rates or other terms and conditions of wholesale power sales or electric transmission that the FPA and FERC exclusively regulate.

8. There is no field preemption here because, in enacting the FPA, Congress did not intend, either explicitly or implicitly, to occupy the field of environmental regulation of the power sector.

9. There is no FPA field preemption here because, under AB 32, California will not be regulating the same subject matter as the FPA, nor will its regulations be for the same intended purpose. California will be regulating GHG emissions for the purpose of reducing them and lessening the impacts of global warming on California.

10. While GHG regulation may have some impact on the wholesale prices paid for electricity, such regulation is no more preempted by the FPA than state

regulations limiting the amount of other pollutants that may be emitted by electric power plants – that may affect the cost of generating electricity and therefore indirectly affect the price of wholesale electricity.

11. The including, in FERC-jurisdictional rates, of any costs of compliance with California's GHG regulations would be subject to FERC review under § 205 of the FPA (16 U.S.C. § 824D). All wholesale sales subject to FERC jurisdiction would occur at the FERC-authorized rate.

12. The proposed structure for regulating GHG emissions would not prevent anyone from selling wholesale electricity into the California market, nor is a license required to do so.

13. The proposed deliverer point of regulation would not conflict with the FPA's electric reliability provisions.

14. A deliverer point of regulation is not preempted by the FPA.

15. The regulations we are proposing are facially neutral, as between interstate and intrastate commerce, and we do not have a discriminatory purpose or effect.

16. Under *Pike v. Bruce Church, Inc.* (1970) 397 U.S. 137, 142, a state enactment "will be upheld unless the burden imposed on [interstate] commerce is clearly excessive in relation to the putative local benefits."

17. The use of a deliverer point of regulation would not violate the dormant Commerce Clause.

18. The deliverer point of regulation would only regulate electricity that is generated in, or delivered for consumption in, California. Thus, it would not regulate any commerce that occurs totally outside of California, and therefore would not regulate extraterritorially in violation of the Commerce Clause.

19. The fact that the Legislature required reporting by retail providers does not mean that retail providers must be the point of regulation for achieving the required

reductions in GHG emissions.

20. Our recommended deliverer point of regulation would not cover power that is merely wheeled through California.

INTERIM ORDER

IT IS ORDERED that:

1. ~~We recommend that the California Air Resources Board (ARB) adopt mandatory levels of energy efficiency savings for publicly owned utilities (POUs), the same as those required of investor owned utilities (IOUs) by the California Public Utilities Commission (Public Utilities Commission), and consistent with energy savings requirements as recommended by the California Energy Commission (Energy Commission).~~

2. We recommend that ~~ARB require~~ POUs set renewable electricity targets to deliver at least 20 percent renewable electricity to their customers by a date certain, perhaps 2015 or 2017.

3. We recommend that ~~ARB work with~~ the Public Utilities Commission, ~~and~~ the Energy Commission, and the publicly owned utilities ~~to~~ set goals to ~~requirements that all retail providers of electricity must~~ deliver more than 20 percent of their power from renewable sources in the future, at levels and dates to be determined.

4. ~~We recommend that, if ARB concludes that it does not have authority to adopt regulations consistent with Ordering Paragraphs 1 and 2, ARB seek such authority from the Legislature.~~

5. We recommend that ARB design a multi-sector cap-and-trade system for greenhouse gas (GHG) emissions in California, to be implemented in 2012. This GHG emissions cap-and-trade system should include the electricity sector.

6. We recommend that, for the electricity sector, ARB establish the compliance obligation in the GHG emissions cap-and-trade system on the entities that

deliver power to the California electricity grid, as described in this decision.

7. We recommend that ARB regulate the emissions associated with multi-jurisdictional utilities' deliveries of electricity to the California grid on a retail provider basis, with GHG emissions attributed based on the proportional share of their electricity sales that are made in California.

8. We recommend that the California Air Resources Board set total greenhouse gas reduction goals and allow the individual RSPs to find the most cost effective way to reach that goal. We recommend that ~~at least some portion~~ if any of the GHG emission allowances available to the electricity sector ~~be~~ are auctioned, ~~with at least some portion of~~ the proceeds from the auctioning of allowances for the electricity sector to be used in ways that directly benefit electricity consumers in California by increasing the amount of low carbon renewable generation, expanding the transmission grid to provide access to renewable generation, expanding energy efficiency programs, providing rate relief to low income ratepayers and similar programs.

9. We recommend that, for the natural gas sector, ARB rely on programmatic measures to achieve emission reductions and not include the natural gas sector in a multi-sector GHG emissions cap-and-trade system at this time. It may be appropriate to include the natural gas sector in a cap-and-trade program at a later date.